

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NEVADA

LIENS AND ADJUSTMENT OR RECOVERIES

1. The State defines "estate" as follows:

"ESTATE" - means all real and personal property and other assets included in the estate of a deceased recipient of Medicaid and any other assets in or to which he/she had an interest or legal title at the time of their death, to the extent of that interest or title. The term includes assets passing by reason of joint tenancy, *tenants-in-common*, life estate, survivorship, living trust, annuity, homestead or other arrangement.

2 The State uses the following notification procedures):

a. Advance Notice Procedure

- 1) All Medicaid applicants are notified of the Medicaid Estate Recovery program at their initial application process and annual redetermination, via the Signature and Affirmation (2920-EM (9/01) which they read and sign. Along with the application or redetermination, the applicant is provided with "Medicaid Estate Recovery Notification of Program Operation" (form 6160) which is signed and dated by the eligibility worker to confirm that a copy was provided to the applicant. The applicant keeps a copy of this form and a copy is filed in the permanent section of the client's case file.

b. Recovery Notification Procedures

Immediately following case identification, all known heirs, survivors and designated representatives are notified of:

- 1) the State's interest in the decedent's estate and of the right to recovery,
- 2) the amount of Medicaid assistance paid, to date, on behalf of the decedent,
- 3) the priority of estate creditors as defined by Nevada State Law, and
- 4) the method through which an undue hardship waiver may be pursued.

3. The State defines undue hardship as severe financial duress or a significant compromise to an individual's health care or shelter needs.

4. Application for Undue Hardship Waiver - Any heir or survivor may seek an undue hardship waiver by submitting a written request for a waiver by completing an "Application (Request) for a Hardship Waiver Regarding Recovery of Correctly Paid Medicaid Benefits" form, within thirty (30) days of notification of the Division's intent to recover. Documentary evidence that supports the applicant's claim should be attached. The written decision of the Administrator will be provided to the applicant 90-days from receipt of the request.

TN No. 02-09

Supersedes

Approval Date April 14, 2003

Effective Date 10/1/02

TN No. 95-11

5. The State will waive enforcement of any estate recovery claim when the requesting party is able to show, through convincing evidence, the state's pursuit of estate recovery subjects them to undue hardship. A claim for emotional hardship is not considered sufficient to warrant waiver approval. No waiver will be granted if the Division finds the undue hardship was created by estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets, in whole or part, to avoid estate recovery. In determining whether undue hardship exists, the following criteria will be used:
- a. The asset to be recovered is the sole income-producing asset of the applicant; or,
 - b. The recovery of the assets would result in the applicant becoming eligible for governmental public assistance based on need and/or medical assistance programs; or,
 - c. A doctor's written verification of a medical condition that compromises the applicant's ability to repay the Medicaid claim.
6. If an undue hardship waiver is requested and the State determines that none of the above conditions apply, full payment of the claim may be ordered, recovery may be temporarily waived, compromised, or modified. The following factors shall be considered individually or in combination when making a decision to temporarily waive, modify, or compromise estate recovery:
- a. The gross annual income, property and other assets of the applicant and their immediate family;
 - b. The type and level of care provided by the applicant (caregiver) to the decedent and the extent to which the care delayed or prevented the institutionalization of the decedent;
- 1) The State uses the following process for determining if the applicants will be considered as caregivers when through clear evidence they substantiate:
- a) Maintained residency in the Medicaid recipient's home for at least two years immediately preceding the recipient's death or admission into a nursing facility, intermediate care facility for the mentally retarded or other medical institutions; and
 - b) Provided care for the Medicaid recipient which meets or exceeds published state standard established for Intermediate Care Level (ICL 1), which includes as necessary, assisting the individual with ambulatory needs, feeding, grooming, personal hygiene, oral hygiene, nail care, bathing toilet activities, skin care and medical needs.
- c. The applicant continuously resided with the decedent for two years or more immediately prior to the decedent's death and continues to reside in the decedent's residence and the prior occupancy permitted the decedent to reside at home rather than in an institution;
 - d. The estimated value of the real or personal property at issue. If the cost of recovering the asset(s) of the deceased Medicaid recipient is more than the value of the asset(s), it would not be cost effective to recover, and/or;
 - e. The financial impact of recovery against immediate family members of the applicant.

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- f. Applicants who seek a recovery delay (i.e., temporary waiver) will be given the opportunity to provide written details or complete an "Application for a Hardship Waiver Regarding Recovery of Correctly Paid Medicaid Benefits" form, within 30-days of notification of the Division's intent to recover.
7. The following collection methods may be utilized when recovery is temporarily waived, compromised, or modified:
- a. Reduction of recovery amount;
 - b. Reasonable payment schedule based on the asset to be recovered; and/or
 - c. Where not prohibited by law, imposition of a lien against the assets of the deceased Medicaid recipient.
 - 1) Before imposition of a lien, the Division shall notify all persons having an interest in the estate of the deceased Medicaid recipient and petition the appropriate district court for the imposition of a lien per NRS 422.29355.
 - 2) If a lien is placed on an individual's home, adjustment or recovery will only be made when:
 - a) there is no surviving spouse;
 - b) there is no child under the age of 21; or
 - c) there is no blind or disabled (as defined in Section 1614 of the Social Security Act) child of the Medicaid recipient.
 - 3) The lien will become due and payable upon the sale, refinance, transfer or change in title to the real property; and /or escrow funding, but only when there is no surviving spouse, children under 21, blind or disabled children of the Medicaid recipient.. Recovery is limited to the Medicaid recipient's interest in the property at the time of claim payment not to exceed the Medicaid claim or the percentage of interest of the Medicaid recipient in the asset.
 - 4) Upon payment of the claim, or need of the statutory exemptions, the division will prepare a release of lien or subordinate the lien. This release will be provided to the appropriate entity; such as, an escrow company or the county recorder's office.
8. The following time frames are used by the State in considering the waiving of estate recoveries:
- a. Any beneficiary, heir or family member claiming entitlement to receive the assets of the deceased Medicaid recipient may apply for a hardship waiver by submitting a written request for a waiver within 30-days of being notified of intent to recover to the Medicaid Estate Recovery unit.
 - b. The Division may request additional information or documentation from the waiver applicant. If some or all of the additional information or documentation is not provided within 30 days of the request, the hardship waiver request will be considered solely on the basis of the information and documentation provided.

TN No. 02-09
Supersedes
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- c. Within 90-days of receipt of the undue hardship waiver request, the Division Administrator OR his appointed representative, will issue a written decision granting or denying the applicant's request for an undue hardship waiver.
9. The State defines cost-effective as follows (include methodology/thresholds used to determine cost effectiveness):
 - a. Cost-effective recovery is accomplished when the amount recovered exceeds the administrative (direct or indirect) expense associated with obtaining the recovery such as, but not limited to, legal fees and expenses.
 - b. Many of the estate recovery activities have been automated thereby minimizing correspondence costs. Individual case analysis and management is not required until a ninety (90) day delinquency has occurred.
 - c. Therefore, case costs would begin to accrue after this time. Costs such as, but not limited to, staff costs, document filing fees, legal costs, postage, copying, travel and indirect administrative costs would be considered.
10. The Division may elect not to recover a Medicaid Estate Recovery claim when the State determines that it is not cost-effective to do so.
 - a. Cost-effectiveness will be decided on a case-by-case basis.
 - b. If the Medicaid claim is \$100 or less or the value of the asset to be recovered is \$100 or less, recovery may not be pursued.
11. Hearing and Appeal Procedures
 - a. If the undue hardship waiver is denied, the decision may be appealed within 30 days through the appropriate district court (Administrative Procedure Act 233B.130).
12. Action to Enforce Recovery:
 - a. Actions to enforce recovery of Medicaid Estate Recovery claims are accomplished through legal means using, if necessary, the appropriate court of jurisdiction. Use of the court protects the due process right of all and guarantees safe protection of the law.
 - b. NRS. 150.220; "Priority of Creditors" list the order in which assets are to be distributed after death. Money owed to the Department of Human Resources as a result of benefits paid to the Medicaid recipient is listed as Number 6 in order of payment.
 - c. Time Frames Involved
 - 1) Action to Enforce Recovery:

Limitations of time to contest specific actions are detailed in Nevada State Law NRS 422.2785.